

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1591 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SUNIL SURESHBHAI AABHALE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1591 of 2003
MR HR PRAJAPATI for Petitioner
MR KP RAVAL, AGP for Respondents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/06/2003

ORAL JUDGEMENT

1. Heard Mr.H.R.Prajapati, learned advocate for the petitioner and Mr.K.P.Raval, learned AGP for the respondents.

2. In the present petition, Rule has been issued by this Court [Coram : P.B.Majmudar,J.] on 18.02.2003, made it returnable after six weeks. In the present petition, the order of detention dated 17.01.2003 passed by the

Commissioner of Police, Vadodara City under Section 3(2) of the Gujarat Prevention Anti-Social Activities Act, 1985 [hereinafter referred to as the "PASA Act"] has been challenged by the petitioner. The order of detention has been executed on the very same day against the petitioner by the Detaining Authority, the petitioner was detained in Bhavnagar District Jail. Looking to the ground of detention against the present petitioner, three offences have been registered on 04.04.2001 and 12.11.2002 at Raopura Police Station, Vadodara, J.P.Road Police Station, Vadodara and Sayajigunj Police Station, Vadodara under the provisions of Prohibition Act. Two unregistered offences narrated by the secret witnesses dated 15.11.2002 and 10.12.2002. The names and addresses of the secret witnesses have not been disclosed to the petitioner and the Detaining Authority has claimed privilege under Section 9(2) of the PASA Act. The statement of the secret witness No.1 was recorded by the Sponsoring Authority on 12.01.2003 and the same was verified by the Detaining Authority on 17.01.2003 and the statement of the secret witness No.2 was recorded by the Sponsoring Authority on 13.01.2003 and the same was verified by the Detaining Authority on 17.01.2003. The affidavit-in-reply has been filed by the Detaining Authority as well as State Government. Both are taken on record and copies thereof have served to the petitioner.

3. Mr.H.R.Prajapati, learned advocate for the petitioner has challenged the order of detention on various grounds, but he has submitted that the order of detention has been passed by the Detaining Authority without application of mind. He has also submitted that the statements of the secret witnesses are not natural and they are all got up to the concerned Police Authority. He has submitted that the statements of the secret witnesses, which have been verified by the Detaining Authority on 17.01.2003 and on the very same day, the order of detention has been served to the petitioner. He has raised specific contention, as to how hurriedly the order of detention has been passed by the Detaining Authority, pointing out the fact that the statement of first secret witness has been recorded on 12.01.2003 and another has been recorded on 13.01.2003 and, thereafter, the detention order has been prepared and served on the same day to the petitioner. Therefore, he has submitted that the order of detention passed by the Detaining Authority in mechanical manner. He has also submitted that the Detaining Authority having no time to verify whether the incident was occurred on real place or not, how the witnesses have not taken any opinion from the respondents authorities and approached

to the P.C.B. Police Station. He has also submitted that the incident occurred on different locality and different area of Vadodara City, then after 10 to 15 days of the incident, the witnesses have approached without any intimation from the authority straightway to the P.C.B. Police Station. Highly this part is unnatural or natural, which has been relied upon by the Detaining Authority for coming to subjective satisfaction for passing the order of detention and, therefore, the detention order is vitiated.

4. Mr.Prajapati, learned advocate for the petitioner has relied upon two decisions of this Court, one is in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat and another, reported in 2000 (3) GLR 2696 and another is unreported judgment rendered in Special Civil Application No.1692 of 1999 dated 07.07.1999.

5. Mr.K.P.Raval, learned AGP for the respondents has relied upon the affidavit-in-reply filed by the Detaining Authority. He has submitted that in para-9 of the affidavit, the Detaining Authority has made it clear that he has examined the genuineness and correctness of the statements of the witnesses as well as narrated the incidents and, therefore, subjective satisfaction is justified from the record and the Detaining Authority has satisfied about the incident and fear, which has been expressed by the witnesses and ultimately, he has passed the order of detention, is legal and valid. He has also submitted that the witnesses having fear, when the incident was occurred and, therefore, they have not likely to approach to the concerned authority and their statements are considered to be natural and, are real one and there is no circumstances which created doubt in the mind of the Detaining Authority. Therefore, the order passed by the Detaining Authority is legal and valid and no interference is required by this Court.

6. I have considered the submissions made by learned advocates for both the parties. The contention raised by Mr.Prajapati, learned advocate for the petitioner is squarely covered by the aforesaid two decisions of this Court. In both the decisions of this Court, the question has been decided that in case, the Authority has verified the statements and on the very next day, the order of detention has been passed, is non-application of mind. In second case, the issue, at the time of verification of the statements of the secret witnesses by the Detaining Authority, the credibility of the witnesses must have to be examined by the Detaining Authority and whether the incident narrated in the statements of the secret

witnesses are real one or not. That aspect is also required to be considered, while coming to the subjective satisfaction by the Detaining Authority. Looking to the facts of the present case, the statements itself verified by the Detaining Authority on 17.01.2003 and on the very same day, the order of detention has been passed and order of detention has been executed against the petitioner, he was not in judicial custody. Accordingly in my opinion, the aforesaid both the decisions are squarely covered to the facts of the present case. In view of the above, the order of detention is required to be vitiated.

7. In the result, the present petition is allowed. The order of detention dated 17.01.2003 passed by the Commissioner of Police, Vadodara City, against the detenu Shri Sunil Sureshbhai Aabhale detained at Bhavnagar District Jail is hereby quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. Direct service is permitted.

[H. K. Rathod,J.]
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